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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,533	02/26/2004	Rachel Brenchley	1220.SEW.CN	1213
27472	7590	07/28/2005	EXAMINER	
RANDALL B. BATEMAN BATEMAN IP LAW GROUP 8 EAST BROADWAY, SUITE 550 PO BOX 1319 SALT LAKE CITY, UT 84110			MCKANE, ELIZABETH L	
			ART UNIT	PAPER NUMBER
			1744	
DATE MAILED: 07/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/787,533

Applicant(s)

BRENCHLEY ET AL.

Examiner

Leigh McKane

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-78 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-78 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>040804</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claim Rejections - 35 USC § 102

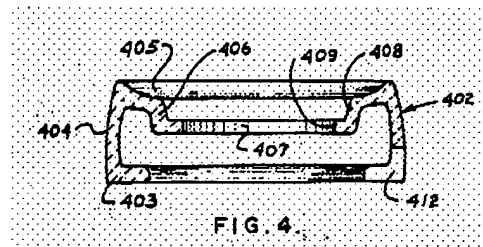
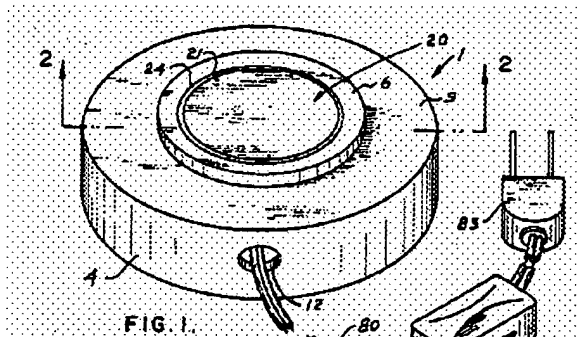
1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 66-68 are rejected under 35 U.S.C. 102(b) as being anticipated by Wightman et al (U.S. 3,876,861).

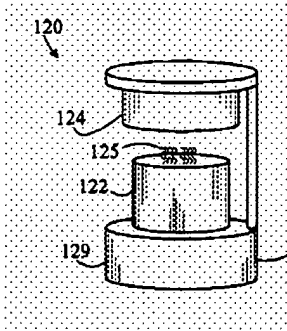
Wightman et al teaches a heating unit including a housing 402, a generally planar and continuous heating element 20,30 adjacent the surface of the housing, and an unheated annular retaining ring 405,406 adjacent the heating element



Art Unit: 1744

3. Claims 66 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by Nacouzi (U.S. 6,354,710).

Nacouzi teaches a heating unit for a candle including a housing (disk shaped member supporting the heating element 124), a generally planar and continuous heating element 124 for heating a candle, and an unheated candle retaining member 129 disposed adjacent the heating element.



Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35

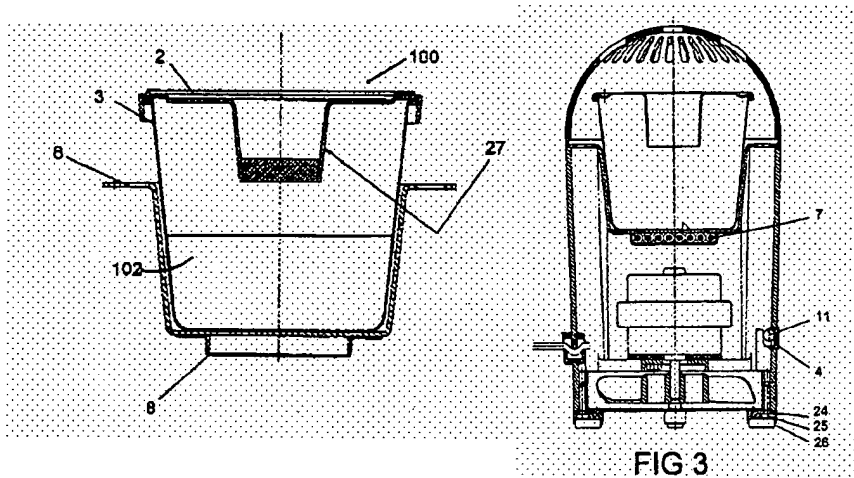
U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1744

6. Claims 36, 37, and 40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart (U.S. 6,413,476) in view of Nacouzi, or alternatively, over Nacouzi in view of Barnhart.

Barnhart teaches a method for emitting fragrance from a candle, wherein a candle 100 having a container 3 and wax 102 is placed on a heating element 7 which heats the container of



wax to emit fragrance from the melted wax. The heating element of Barnhart is not planar disk shaped.

Nacouzi discloses a method for emitting fragrance wherein a candle 122 having a container and wax is placed under a planar disk shaped heating element 124 which heats the wax to emit fragrance from the melted wax. See col.1, lines 39-40 and lines 43-44; col.3, lines 60-62.

It would have been obvious to one of ordinary skill in the art to substitute the planar, disk shaped heating element of Nacouzi for that of Barnhart, as they are functional equivalents and one would have an expectation of success when doing so.

Alternatively, it would have been obvious to use the heating element 124 of Nacouzi to heat the candle from below, as disclosed by Barnhart, in order to leave the top of the candle unobstructed to fragrance emission.

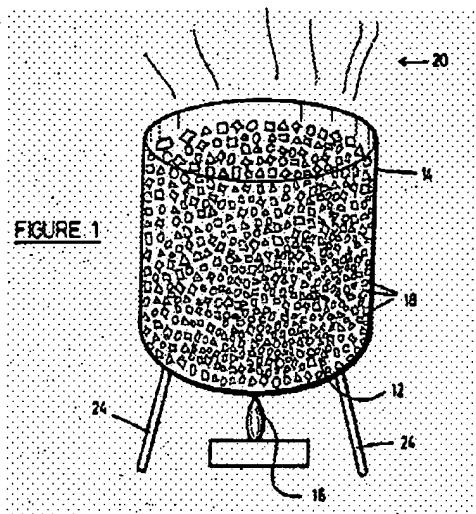
Art Unit: 1744

With respect to adding additional fragrance to the wax, although neither Barnhart nor Nacouzi suggest doing so, the amount of fragrance emitted by the candle directly affects the usefulness of the device. When the fragrance is depleted the candle has no purpose, as it is wickless. Therefore, it is deemed obvious to add more fragrance as the fragrance is depleted, thereby extending the useful life of the device.

7. Claims 38, 39, and 71-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart and Nacouzi, and further in view of Lam (GB 2199246).

With respect to claims 38 and 74, Barnhart and Nacouzi are silent with respect to adding

additional candle wax to the candle. Lam teaches an air freshener comprising a container 14 and wax 12. Fragrance is released from the wax by the application of heat. See Abstract. Lam specifically discloses using individual pieces of wax to make a decorative air freshener. The air freshener may be provided in kit form including a bag of wax pieces. See page 3, lines 15-20. It would have been obvious to provide additional wax pieces in the manner of Lam, to add to the candles of



Barnhart and Nacouzi in order to replenish evaporated wax and thereby, extend the useful life of the device.

As to claims 39 and 71-73, the containers of Barnhart and Nacouzi are not disclosed to be glass/transparent. However, Lam discloses a transparent jar for containing the wax so that as the wax is melted, the colors and shapes of the wax pieces can be viewed. Although not specifically enumerated, glass is deemed to be an obvious transparent material for the container as being one

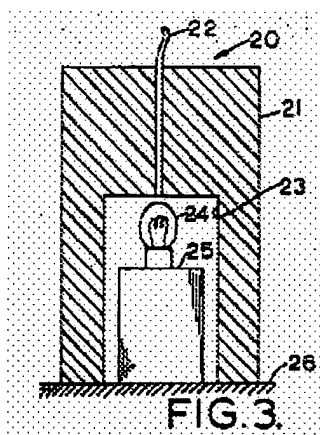
Art Unit: 1744

commonly used in candles. Moreover, it would have been obvious to employ a transparent, glass container in the devices of Barnhart and Nacouzi in order to view the wax as it melts.

With respect to claim 75, as set forth above although neither Barnhart nor Nacouzi suggest doing so, the amount of fragrance emitted by the candle directly affects the usefulness of the device. When the fragrance is depleted the candle has no purpose, as it is wickless. Therefore, it is deemed obvious to add more fragrance as the fragrance is depleted, thereby extending the useful life of the device.

8. Claims 76 and 77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart, Nacouzi, and Lam, as applied to claim 71, and further in view of Andeweg (U.S. 3,761,702).

While the combination of Barnhart with Nacouzi, or alternatively, Nacouzi with Barnhart teaches a candle heating unit comprising a housing and a planar, disk shaped heating element, neither Barnhart nor Nacouzi teach illuminating the candle wax or a light attachment adjacent



or in the candle. Andeweg teaches an internally illuminated candle comprising a channel formed through the center and containing a light attachment 25 and light bulb 24 with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Andeweg discloses that the internal light may include "flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles." See col.1, lines 8-

21. It would have been obvious to one of ordinary skill in the art to modify the inventions of either Barnhart or Nacouzi, including an internal light attachment for the candles, in order to

Art Unit: 1744

illuminate the candle and achieve the “esthetically pleasing internal light” disclosed by Andeweg (Abstract).

9. Claims 41-43, 48-52, 54-57, and 78 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart and Nacouzi, and further in view of Andeweg.

As set forth in the paragraph *supra*, although the combination of Barnhart with Nacouzi, or alternatively, Nacouzi with Barnhart teaches a candle heating unit comprising a housing and a planar, disk shaped heating element, neither Barnhart nor Nacouzi teach illuminating the candle wax or a light attachment adjacent or in the candle. Andeweg teaches an internally illuminated candle comprising a channel formed through the center and containing a light attachment **25** and light bulb **24** with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Andeweg discloses that the internal light may include “flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles.” See col.1, lines 8-21. It would have been obvious to one of ordinary skill in the art to modify the inventions of either Barnhart or Nacouzi, including an internal light attachment for the candles, in order to illuminate the candle and achieve the “esthetically pleasing internal light” disclosed by Andeweg (Abstract).

With respect to a control switch, Nacouzi discloses that the heat source **124** includes “an adjustable heat control **127**”. Barnhart teaches an on-off switch **19** for the heating element.

10. Claims 44 and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barnhart, Nacouzi, and Andeweg, as applied to claims 43 and 48, and further in view of Wightman et al.

The combination *supra* is silent with respect to an unheated retaining ring disposed

Art Unit: 1744

around the disk shaped heating element. Wightman et al teaches a heating device including a disk shaped heating element **20,30** having an unheated retaining ring **6** disposed around the heating element **20,30**. See Figures 1 and 4; col.1, lines 14-22.

It would have been obvious to use an unheated retaining ring in the combinations above in order to prevent unwanted movement of the candle while on the heating element.

11. Claims 45, 47, 58-62, 64, and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg.

Nacouzi discloses a method for emitting fragrance wherein a wickless candle **122** having a container and wax is placed under a planar disk shaped heating element **124** which heats the wax to emit fragrance from the melted wax. See col.1, lines 39-40 and lines 43-44; col.3, lines 60-62. Nacouzi fails to teach illuminating the candle wax or a light attachment adjacent or in the candle.

Andeweg teaches an internally illuminated candle comprising a channel formed through the center and containing a light attachment **25** and light bulb **24** with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Andeweg discloses that the internal light may include "flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles." See col.1, lines 8-21. It would have been obvious to one of ordinary skill in the art to modify the invention of Nacouzi by including an internal light attachment for the candle, in order to illuminate the candle and achieve the "esthetically pleasing internal light" disclosed by Andeweg (Abstract).

Furthermore, since Nacouzi already teaches that a light may be provided above the candle for heating purposes, it is deemed obvious to include an additional light above the candle for illumination thereof, in the manner of Andeweg.

With respect to adding additional fragrance to the melted wax, although Nacouzi fails to suggest doing so, the amount of fragrance emitted by the candle directly affects the usefulness of the device. When the fragrance is depleted the candle has no purpose, as it is wickless. Therefore, it is deemed obvious to add more fragrance as the fragrance is depleted, thereby extending the useful life of the device.

12. Claims 46 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi and Andewg as applied to claims 45 and 58 above, and further in view of Lam.

With respect to claim 46, the container of Nacouzi is not disclosed to be glass/transparent. However, Lam discloses a transparent jar for containing the wax so that as the wax is melted, the colors and shapes of the wax pieces can be viewed. Although not specifically enumerated, glass is deemed to be an obvious transparent material for the container as being one commonly used in candles. Moreover, it would have been obvious to employ a transparent, glass container in the devices of Barnhart and Nacouzi in order to view the wax as it melts.

As to claim 63, Nacouzi is silent with respect to adding additional candle wax to the candle. Lam teaches an air freshener comprising a container 14 and wax 12. Fragrance is released from the wax by the application of heat. See Abstract. Lam specifically discloses using individual pieces of wax to make a decorative air freshener. The air freshener may be provided in kit form including a bag of wax pieces. See page 3, lines 15-20. It would have been obvious

Art Unit: 1744

to provide additional wax pieces in the manner of Lam, to add to the candle of Nacouzi in order to replenish evaporated wax and thereby, extend the useful life of the device.

13. Claims 69 and 70 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nacouzi in view of Andeweg.

Nacouzi fails to teach illuminating the candle wax or a light attachment adjacent or in the candle. Andeweg teaches an internally illuminated candle comprising a channel formed through the center and containing a light attachment 25 and light bulb 24 with socket (unlabeled). The light attachment illuminates the candle. See Figure 3. Andeweg discloses that the internal light may include "flashing or other varied lighting, including color varied internal lighting, to provide infinitely variable illuminated candles beautiful as centerpiece candles." See col. 1, lines 8-21. It would have been obvious to one of ordinary skill in the art to modify the invention of Nacouzi by including an internal light attachment for the candle, in order to illuminate the candle and achieve the "esthetically pleasing internal light" disclosed by Andeweg (Abstract).

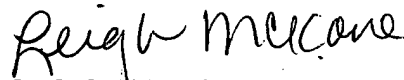
Conclusion

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Leigh McKane whose telephone number is 571-272-1275. The examiner can normally be reached on Monday-Wednesday (5:30 am-3:00 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on 571-272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1744

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Leigh McKane
Primary Examiner
Art Unit 1744

elm
26 July 2005